IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2578 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHANSUKHBHAI PRABHUBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT THRO.SECRETARY & 5 - Respondent(s)

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Appearance :
MR KK TRIVEDI for Petitioner(s) : 1,
MR SATYAM CHHAYA, AGP for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 6.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 19/02/2007

ORAL JUDGMENT

1. Rule. Mr.Chhaya, learned AGP waives service of

notice of Rule on behalf of the State Authorities. With the consent of the learned Counsel for both the sides, the matter is taken up for final hearing today.

2. The petitioner has preferred the petition for challenging the Notice – Annexure “A” dated 18.12.2006 issued by the Collector based on the circular dated 7.10.2005 of the State Government.

3. Heard Mr.Trivedi, learned Counsel for the petitioner and Mr.Chhaya, learned AGP for the State Authorities.

4. It may be recorded on 2.2.2007, this Court had passed the following order:

“ In view of the Judgment of this Court dated 17-18-23.01.2007 in Special Civil Application No. 9609 of 2006 and allied matters, as the circular of the Government dated 07.10.2005 is quashed, the Collector would not be empowered to take up the matter in review in the so called purported exercise of the power entrusted to him under Section 43 of the Act by the said

circular. Therefore, prima facie now it can be said that the impugned notice dated 18.12.2006(Annexure-A) would be without jurisdiction.

Hence, ***Notice*** returnable on 19th February, 2007. By ad interim order, it is directed that the proceedings before the Collector pursuant to the impugned notice dated 18.12.2006 (Annexure-A) shall remain stayed with the clarification that the interim relief shall not operate as a bar to the Collector in exercising other statutory power as may be permissible under the Act or the other remedial measure against the order dated 05.11.2005 passed by the Mamlatdar, if otherwise permissible in law. D.S. permitted."

5. It further appears from the submissions made by the learned Counsel appearing for both the sides that when the circular is quashed by this Court, no jurisdiction can be read with the Collector for the contemplated exercise of the power as per Notice – Annexure "A" and so far as the

other remedial measures are concerned, it was already observed by the Court at the time when the interim order came to be passed.

6. However, Mr.Chhaya, learned AGP submitted that as per his instructions, the Government is desirous to carry the matter before the higher forum in LPA against the decision of this Court dated 17th/18th/23rd January, 2007 in SCA No.9609 of 2006 and allied matters and, therefore, he submitted that in the event the Division Bench passes order either of restoring the circular or otherwise, the Collector should be at liberty to take action in accordance with law.

7. In my view, up till now, no LPA is said to have been preferred and even otherwise also if the Division Bench passes order for putting life to the circular by appropriate direction, the consequence in accordance with law would follow, but the matter cannot be decided, as on today, on the premise that the circular is in operation.

8. Under the above circumstances, the only conclusion, which can be recorded is that as the

circular is quashed by this Court, the Collector has no jurisdiction to take up the matter for passing appropriate orders based on the said circular, as per the Notice – Annexure “A”. However, the other remedial measures, as may be permissible in law, are even otherwise also open to the concerned authority of the State Government.

9. Under the above circumstances, the impugned Notice dated 18.12.2006 so far as it relates to initiation of the proceedings based on the circular dated 7.10.2005 of the State Government is quashed and set aside with the clarification that the present direction shall not operate as a bar to the Collector in exercising other statutory powers, as may be available under the Act, nor the bar shall operate for other remedial measures against the order dated 24.7.2002 passed by the Mamlatdar and ALT, if otherwise permissible in law. It is clarified that in the event the higher forum known to law passes any order against the judgement dated 17th/18th/23rd January, 2007 in SCA No.9607 of 2006

so far as it relates to the circular dated 7.10.2005, the rights of the parties shall stand governed accordingly.

10. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Direct service is permitted.

19.2.2007 **(Jayant Patel, J.)**

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